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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 v.

23 Civ. 9304 (DEH)

6 THE M/Y AMADEA, A MOTOR YACHT BEARING
7 INTERNATIONAL MARITIME ORGANIZATION
8 NO. 1012531, INCLUDING ALL FIXTURES,
9 FITTINGS, MANUALS, STOCKS, STORES,
10 INVENTORIES, AND EACH LIFEBOAT, TENDER,
11 AND OTHER APPURTENANCE THERETO,

12 Defendant-in-Rem.

13 Eduard Yurievich Khudainatov,
14 Millemarin Investments Ltd.,

15 Claimants.

Conference

16 New York, N.Y.
17 January 17, 2024
18 11:00 a.m.

19 Before:

20 HON. DALE E. HO,

District Judge

21 APPEARANCES

22 U.S. ATTORNEY'S OFFICE
23 SOUTHERN DISTRICT OF NEW YORK
24 Attorneys for Plaintiff
25 BY: TARA M. LA MORTE, ESQ.
Assistant United States Attorney

U.S. DEPARTMENT OF JUSTICE
FRAUD SECTION, CRIMINAL DIVISION
Attorneys for Plaintiff
BY: JOSHUA L. SOHN, ESQ.
Trial Attorney

FORD O'BRIEN LANDY LLP
Attorneys for Claimants
BY: ADAM C. FORD, ESQ.
RENEE L. JARUSINSKY, ESQ.

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1 (Case called)

2 THE DEPUTY CLERK: Counsel, can you please state your
3 name for the record, starting with the plaintiffs.

4 MS. LA MORTE: Good morning, your Honor. I am Tara
5 La Morte. I'm an assistant United States Attorney in the
6 Southern District. And I will let my colleague introduce
7 himself.

8 MR. SOHN: And I am Joshua Sohn, a trial attorney in
9 the money laundering and asset recovery section of the DOJ,
10 also for the plaintiff.

11 THE COURT: Good morning.

12 MR. FORD: Good morning, your Honor. Adam Ford on
13 behalf of the claimant Eduard Khudainatov and Millemarin, and
14 along with me is my colleague/partner Renee Jarusinsky.

15 THE COURT: Good morning.

16 MS. JARUSINSKY: Good morning, your Honor.

17 THE COURT: Please, everyone, have a seat.

18 So we're here for an initial pretrial conference in
19 this matter. I think I just want to thank everyone for showing
20 up in person for this, especially Mr. Sohn. I know it was not
21 unburdensome to come from Washington for this.

22 I just want to go over some scheduling matters and a
23 few questions I have about some of the issues raised in the
24 parties' joint submission, but before we jump into that, I
25 think it might be helpful to just hear from the government, and

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1 we'll also hear from the claimants, and just a brief overview
2 of the matter and what you see as kind of the major sticking
3 points.

4 MR. SOHN: Yes, your Honor.

5 So this is a civil forfeiture case over the M/Y
6 *Amadea*, a 106-meter superyacht. The government contends that
7 the *Amadea* is beneficially owned by Suleiman Kerimov, a Russian
8 oligarch who is under sanctions under IEEPA and associated
9 executive orders, and we contend that the *Amadea* is forfeitable
10 under 18 U.S.C. 981(a)(1)(A) and (a)(1)(C) as property
11 traceable to IEEPA sanctions violations and as property
12 involved in money-laundering transactions, with IEEPA serving
13 predominantly as the authority supporting those
14 money-laundering transactions.

15 So obviously claimants disagree on who the ultimate
16 beneficial owner is. They allege that the ultimate beneficial
17 owner is not Mr. Kerimov but rather a different Russian
18 businessman, Eduard Khudainatov. So I think the parties are in
19 agreement, so to speak, that a very major factual dispute to be
20 resolved in this case is who is the ultimate beneficial owner
21 of the boat. I will let claimants respond if they have other
22 major factual issues that they see as being raised.

23 So I don't know if your Honor would like more
24 discussion about pending motions that seem to be rearing their
25 head.

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1 THE COURT: We can jump into those. Why don't I just
2 hear from Mr. Ford for the claimants, and then we can talk
3 about some of those possible motions that might be coming.

4 Mr. Ford, is there anything you'd like to add?

5 MR. FORD: Your Honor, should I stand when I speak?

6 THE COURT: It's fine either way.

7 MR. FORD: Okay. I'll remain seated then.

8 Thank you, your Honor. I think Mr. Sohn sort of
9 identified certainly the core of the matter. We represent
10 Eduard Khudainatov. He's the individual who commissioned and
11 had the *Amadea* built, starting 2012. He's always been the
12 ultimate beneficial owner. There may have been some changes
13 with respect to corporate structure, but it always led back to
14 him, still leads back to him. It's his vessel. And we'll be
15 prepared to prove that factually.

16 In terms of some other issues, however, you know, we
17 think that the forfeiture complaint on its face has legal
18 defects, meaning even if the boat were owned by Mr. Kerimov,
19 which it is not, the allegations currently set forth don't
20 amount to the boat being property that's traceable to a
21 violation or involved in money laundering. At best, at best,
22 what the government has alleged is that there is \$1.3 million
23 in vendor payments—that is, payments that were made, frankly,
24 by a yacht management company to vendors that were either in
25 the United States or had correspondent bank accounts—and that

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1 that \$1.3 million is what's at issue. So to be clear, the
2 government does not allege—of course it could not—that the
3 alleged sale—they claim that it was sold to Mr. Kerimov in the
4 summer of 2021. They do not allege any issue with that sale.
5 It's only the \$1.3 million in vendor payments.

6 And also, as we'll set forth in our forthcoming
7 motion, even assuming Mr. Kerimov is the owner of the boat—he
8 is not—what is at issue in this case is \$1.3 million. One of
9 the things that we will be arguing and that we'll be proposing
10 to the Court is that because the only amount in controversy is
11 this 1.3 million, we propose that the boat should be released
12 back to our client and in exchange, our client will put in the
13 court's escrow account the exact amount of money that is
14 actually at issue such that if the government were to
15 eventually prove its case, they would have the full amount
16 available to it in the court's escrow account. We'll set forth
17 more of this in our moving papers, which we'll be filing
18 shortly.

19 THE COURT: Okay. I'll have a few questions about
20 that. That's the substitution motion that was referenced in
21 the—

22 MR. FORD: That's right, your Honor.

23 THE COURT: I do have a few questions about that. But
24 before that, I just want to get into the schedule and the
25 proposed case management plan, which seems fine, so I will

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1 enter it later today.

2 I did see that you all referenced the possibility of a
3 referral to the magistrate judge for mediation at the close of
4 fact discovery, so what I think I'll ask you to do—and I know
5 there's going to be some motions practice before that, but I'll
6 just add a line in the case management plan requesting that you
7 submit a status letter to me at the close of fact discovery as
8 to whether or not you still want that referral to the
9 magistrate judge, and if so, I'll sign one right away.

10 Before getting to the motions, just one question about
11 discovery. It seems there's some dispute between the parties
12 as to special interrogatories that the government wishes to
13 serve. Could I just maybe ask the government your position and
14 then I'll turn to the claimants.

15 MR. SOHN: Sure. So the supplemental rules plainly
16 allow the government to serve standing interrogatories.
17 Claimants' position, as best we can tell, is that they provided
18 so much detail in their claim that that somehow obviates the
19 need for standing interrogatories. We disagree. We don't
20 think there's any authority that simply because the claimant
21 chooses to be relatively verbose in their claim that that
22 somehow strips the government of its right to serve standing
23 interrogatories. Obviously with respect to claimant
24 Khudainatov, we do not believe he likely has standing because
25 we do not believe he is the true owner of the boat. Even as to

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1 the corporate claimant Millemarin, as we plead in our
2 complaint, we allege that there was a transaction by which
3 another company called Errigal purchased the stock in
4 Millemarin and thus became really the true owner of the boat.
5 So there's at least a fact issue of whether Millemarin is a
6 mere nominee for this other company, Errigal.

7 So there are multiple disputed issues on standing, and
8 we have the right, under the supplemental rules, to serve
9 interrogatories to get at the standing issue, and we intend to
10 exercise that right.

11 THE COURT: Thank you.

12 Mr. Ford, I'll let you respond, and then I may have a
13 question for you.

14 MR. FORD: Yeah, sure. Thank you, your Honor.

15 Yeah, as we understand it, the purpose of the standing
16 interrogatories are to sort of weed out frivolous claims,
17 right? So the government brings a forfeiture action, and if
18 someone shows up and says, hey, you know, that's my
19 quarter-billion-dollar boat, the government should have a right
20 to very quickly and promptly suss out whether this is sort of a
21 real claim or someone just, you know, sort of trying to pull
22 one over. When we filed our claim—and look, I mean, the
23 government—we've been in talks with the government, at least
24 in public, for well over a year plus, year and a half. The
25 government knows who we are; they know we represent

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1 Mr. Khudainatov; they understand—and we've proven our claim
2 through all of the documents, which is, as we've said, we have
3 the purchase and sale agreement, we have all of the documents
4 related to the *Amadea*, and they all lead back to
5 Mr. Khudainatov. And we're not just saying it. We actually
6 filed it in our claim. Given that, the—so what we've—so
7 we've in fact already answered what the government would be
8 asking in a standing interrogatory. So when we filed our
9 claim, your Honor, we didn't have to do what we did. We could
10 have literally—and we've seen this—we could have filed one
11 piece of paper that says, you know, Eduard Khudainatov,
12 Millemarin assert a claim, and we could have handed that in,
13 and that would have started—that would have brought us to this
14 table. In that case, the government could have then served
15 standing interrogatories and said, well, how could you possibly
16 say this? What's your evidence? Come forward with it. We
17 skipped that step. We provided that evidence. There is
18 absolutely no doubt that Mr. Khudainatov has standing to make
19 this claim; and Millemarin, the entity, as well. And so for
20 that reason, we feel as though the government I guess can serve
21 them, but we've already provided that information.

22 THE COURT: But you don't dispute the government's
23 authority under the supplemental rules to serve the
24 interrogatories, or think that I have any sort of authority to
25 quash that, do you?

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1 MR. FORD: Well, I guess to the—I guess if they want
2 to serve the interrogatories and we provide the same documents,
3 I guess we could go through that exercise, yeah. I'm not
4 certain—well, I don't know the answer, sitting here today,
5 whether your Honor would have the authority to quash those or
6 not. I think I'll reserve on that. But sitting here today,
7 I'm not aware of it.

8 THE COURT: Nor am I, sitting here today. So there's
9 no pending request before me, but the parties flagged it in
10 your status letter to me, so it seemed like something that we
11 should discuss. If there's any dispute, any kind of discovery
12 dispute that you want to bring to me, then obviously you can
13 and I'll rule on it at that time. I'm not going to rule on
14 something that's not before me. But I'll tell you that I don't
15 see any basis to deny the government its ability to serve those
16 interrogatories, which seem permitted under the rules.

17 What I'd like to turn to next are the motions that you
18 all have referred to and that might be coming down, and my
19 understanding from reading the status letter is that what's
20 triggered the possibility of the substitution motion is the
21 government's possible interlocutory—maybe I'm wrong; maybe
22 these are two independent issues, but they seemed related from
23 the way they were presented in the letter—the government's
24 potential interlocutory sale of the boat.

25 So why don't I turn to the government first and, if

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1 you could, just so I'm aware of the current status of things,
2 is it still in San Diego?

3 MR. SOHN: Yes, it is, your Honor.

4 THE COURT: And is the government currently paying
5 maintenance on it?

6 MR. SOHN: Yes.

7 THE COURT: How much does that amount to?

8 MR. SOHN: It's hundreds of thousands of dollars per
9 month. We were still talking with the Marshals about the
10 precise figure. And certainly if this matter proceeded to
11 interlocutory sale, we would in detail itemize the precise
12 figures and the breakdowns, but sitting here today, I can say
13 it's hundreds of thousands of dollars per month.

14 THE COURT: Okay. And is the government's intention
15 still to pursue an interlocutory sale or still thinking about
16 it?

17 MR. SOHN: So the government's motion is to try and
18 stop these large maintenance payments. That's a real drain on
19 the public fisc, and interlocutory sale seemed to us to be the
20 most efficacious way of doing that. We are in correspondence
21 with claimant both by email and even in the hallway just
22 outside, where the parties are talking about whether there can
23 be other arrangements that would stop this bleed of funds, so
24 to speak, which might include an agreed arrangement by which
25 claimant shoulders the maintenance costs with various

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1 stipulations such as that, you know, that cannot be used as
2 evidence of ownership, and so on. And so we would ask that the
3 Court give the parties a little bit of time to see whether an
4 agreed resolution can be worked out. If an agreed resolution
5 cannot be worked out, we do expect that we would come before
6 the Court promptly with a motion for interlocutory sale.

7 THE COURT: Roughly how much time do you think you
8 might need for that?

9 MR. SOHN: I don't think we would need any more than a
10 couple weeks at most to see whether the parties can reach
11 agreement or whether no agreement can be reached.

12 THE COURT: Okay. Why don't I turn to Mr. Ford and
13 give you an opportunity to respond.

14 MR. FORD: Yes, your Honor.

15 So certainly we would oppose vigorously any attempt at
16 an interlocutory sale. But my client Mr. Khudainatov has also
17 made clear from the very beginning that he was willing to pay
18 all of the maintenance costs for his vessel. He does not
19 believe it's fair that the American taxpayers have been
20 shouldering this burden. He has been offering to make these
21 payments for quite awhile, from the start, in fact, and he's
22 still willing to make those, and it's just a matter of if we
23 can come to an agreement with the government as to that. So
24 for that reason, we hope that we can come to an agreement,
25 Mr. Khudainatov will pay for the maintenance for his vessel,

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1 and we won't need an interlocutory sale.

2 THE COURT: Do you think what Mr. Sohn suggested about
3 two weeks is enough time to try to hammer something out? I
4 could say two weeks from this Friday, February 2nd?

5 MR. SOHN: Certainly seems like plenty of time for us,
6 yes.

7 THE COURT: Perhaps I'll ask you then to file a status
8 letter two weeks from Friday, February 2nd, on the status of
9 those conversations and whether or not that resolves the
10 possibility of interlocutory sale or whether or not I should
11 expect motions practice on that. If you are able to resolve
12 it, then does that resolve the anticipated substitution motion,
13 Mr. Ford, that you were thinking about filing, or are these
14 really independent issues?

15 MR. FORD: Yeah, no, your Honor. Respectfully, we see
16 them as, frankly, completely different issues, and so we intend
17 to make our motion for, you know—we'll call it the
18 substitution, although I think it's not a precise word because
19 of substitute, you know, as a term of art. But we still
20 intend—as I said earlier, we believe that the amount of money
21 that the government could ultimately recover on this case, even
22 if it were successful, is less than 1 percent of the value of
23 the vessel, and therefore, we'd prefer to put the cash in the
24 court's CRIS account and remove the vessel and then continue
25 with the litigation at that point.

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1 THE COURT: Have the parties conferred on what a
2 briefing schedule for that might look like?

3 MR. SOHN: Yes, your Honor. We conferred just in the
4 hallway before the conference, and I think the parties are in
5 agreement that the normal default briefing schedule of Local
6 Rule 6.1 would be appropriate, where there's 14 days for
7 opposition, seven for a reply.

8 THE COURT: Okay. Do you have a sense, Mr. Ford, for
9 when you anticipate filing that motion?

10 MR. FORD: Your Honor, we should be prepared—right
11 now I believe our motion to dismiss is due on January 26th, and
12 so I think we will either file it along with that motion or, if
13 we could have an additional week for that in the event that we
14 don't have that ready for the January 26 deadline?

15 THE COURT: Okay. Well, I take your point that it's
16 independent of the interlocutory sale issue, but I want to give
17 you an opportunity to resolve that, and it maybe does change
18 the facts a little bit, and that might be relevant on the
19 substitution motion or at least just helpful to know when
20 considering it, so I think a week after the motion to dismiss
21 deadline is fine. Does the government have any issues with
22 that?

23 MR. SOHN: No issues, your Honor.

24 THE COURT: Okay. I think that is everything that I
25 wanted to address today. I will put a control date in the case

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1 management plan for a status conference after the close of all
2 discovery. Obviously if the case is resolved before then, we
3 won't need to have that conference. And I know the parties
4 disagree on the necessity of a jury trial, but I think we can
5 hold on that until at least that post-discovery conference.

6 Is there anything else that we should talk about
7 today? I'll start with the government.

8 MR. SOHN: I don't think so, your Honor.

9 THE COURT: Okay. Mr. Ford? Oh.

10 MS. JARUSINSKY: Ms. Jarusinsky. Hi, your Honor.

11 THE COURT: Yes.

12 MS. JARUSINSKY: One of the things we noted in our
13 letter on the second page with respect to discovery that has
14 already taken place and/or necessary to facilitate settlement
15 discussions, at the very end of that paragraph, we noted
16 that—I think the government stated in the letter that they
17 don't think any discovery would particularly advance settlement
18 discussions at this time. However, we would—we contend that
19 the production of the government's case file actually may help
20 in that regard, so at this time we are requesting that the
21 government produce their case file. We'd be willing to provide
22 a hard drive or whatever is necessary to facilitate that.

23 THE COURT: Mr. Sohn?

24 MR. SOHN: If claimants wish to ask for the case file,
25 I think the parties are in agreement that normal civil

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1 discovery should be opening. They can make a document request
2 for that; we can then interpose any objections either on
3 privilege grounds or otherwise and produce nonprivileged,
4 responsive documents in accordance with normal rules of fact
5 discovery. In other words, I don't see any sort of special
6 carveout needed.

7 THE COURT: Right. And I don't have a dispute in
8 front of me, so I'll just tell the claimants what I told the
9 government, which is essentially, serve your discovery
10 requests, and if there's a dispute about them and you can't
11 resolve it, bring it to my attention, and I'll do my best to
12 resolve it as quickly as I can.

13 MS. JARUSINSKY: Thank you, your Honor.

14 THE COURT: Anything else from claimants?

15 MS. JARUSINSKY: No. Thank you, your Honor.

16 MR. FORD: Nothing.

17 THE COURT: Okay. Well, thank you all so much for
18 your time, and again, Mr. Sohn, for making the trip all the way
19 up here. And I think we're adjourned.

20 THE DEPUTY CLERK: All rise.

21 THE COURT: Thank you.

22 ALL COUNSEL: Thank you.

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25